MP Machinery (M) Sdn Bhd v Public Prosecutor

HIGH COURT (KOTA KINABALU) — CRIMINAL APPEAL NO K41–14 OF 1995
TEE AH SING JC
5 DECEMBER 1995

Criminal Procedure *— Forfeiture — Price control offence — Failure to indicate price — Whether court has discretion to forfeit goods seized — Whether goods seized were price controlled goods — Whether goods should be forfeited under s 407(2) Criminal Procedure Code (FMS Cap 6) or s 14(2)(b) Price Control Act 1946 — Whether magistrate exercised his discretionary power to forfeit correctly*

The appellant, a retailer, was charged under O 3(1) of the Price Control (Indication of Price by Retailer) Order 1993 ('the Order') for not attaching any labels, price tags and/or marks on certain retail goods. The appellant pleaded guilty and was fined RM1,000 and the items which constituted the subject matter of the charge were confiscated and forfeited by the magistrate under s 407(2) of the Criminal Procedure Code (FMS Cap 6) ('the CPC'). The appellant appealed on the following grouds: (i) that the magistrate was not empowered to make an order of forfeiture under s 22 of the Price Control Act 1946 ('the Act'); (ii) that the magistrate had erred in law in holding that the goods could be forfeited under s 407(2) of the CPC as s 14(2)(a) and (b) of the Act related to forfeiture which only applied to price controlled goods whereas the subject matter of the charge were not price controlled goods; and (iii) that the order of forfeiture was excessive in view of mitigating factors in the case.

Held, dismissing the appeal:

(1) Under s 14(2)(b) of the Act, the court has a discretion whether to forfeit any price controlled goods seized or not. The goods described in the charge under O 3(1) of the Order were price controlled goods as the Order was made pursuant to the powers conferred by s 13(1)(d) of the Act, and s 14(4) of the Act defines price controlled goods to include 'any goods or classes of goods in respect of which the price controller has prescribed marks or labels to be displayed under s 13(1)(d)'. Therefore, the magistrate had the discretion to order forfeiture of the goods described in the charge under s 14(2)(b) the Act (see pp 216I, 217A–F; *PP v Chu Beow Hin* [1982] 1 MLJ 135 followed).

(2) However, the magistrate made an order of forfeiture under the general provisions of s 407(2) of the CPC. In view of the fact that s 14(2)(b) of the Act is a special provision made in a special statute, the principle of generalibus specialia derogant applies and therefore the Act supersedes the general provisions of the CPC. The magistrate should have exercised the discretionary

power of forfeiture under s 14(2)(b) and not s 407(2) of the CPC. From the grounds of decision of the magistrate, he had exercised his discretionary powers to order forfeiture correctly, and by exercising the revisionary powers of the High Court, the order of forfeiture would be made pursuant to s 14(2)(b) of the Act (see pp 217G–I, 218A–C; *PP v Chu Beow Hin* [1982] 1 MLJ 135 followed).

[Bahasa Malaysia summary

Perayu, seorang penjual runcit, telah dituduh di bawah perintah 3(1) Perintah Kawalan Harga (Penandaan Harga oleh Penjual Runcit) 1993 ('Perintah itu') kerana tidak melekatkan label, teg atau tanda harga pada beberapa barang runcit yang tertentu. Perayu mengaku bersalah dan telah didenda RM1,000 dan barang runcit yang menjadi perkara dalam pertuduhan itu telah dirampas dan dilucut hak oleh majistret di bawah s 407(2) Kanun Acara Jenayah (NMB Bab 6) ('KAJ'). Perayu merayu di atas alasan yang berikut: (i) bahawa majistret tidak mempunyai kuasa untuk membuat perintah perlucuthakan di bawah s 22 Akta Kawalan Harga 1946 ('Akta itu'); (ii) bahawa majistret membuat kesilapan dari segi undang-undang dalam memutuskan bahawa barangan itu boleh dilucut hak di bawah s 407(2) KAJ itu kerana s 14(2)(a) dan (b) Akta itu berkaitan dengan perlucuthakan yang hanya digunakan ke atas barang harga terkawal manakala perkara dalam pertuduhan itu bukan barang harga terkawal; dan (iii) bahawa perintah perlucuthakan adalah berlebihan memandangkan faktor peringanan dalam kes itu.

Diputuskan, menolak rayuan itu:

(1) Di bawah s 14(2)(b) Akta itu, mahkamah mempunyai budi bicara sama ada untuk melucutkan hak mana-mana barang harga terkawal yang dirampas ataupun tidak. Barang yang disebut dalam pertuduhan di bawah A 3(1) Aturan itu adalah barang harga terkawal kerana Aturan itu dibuat di bawah kuasa yang diberikan oleh s 13(1)(d) Akta itu, dan s 14(4) Akta menyifatkan barang harga terkawal sebagai 'mana-mana barang atau kelas barang yang mana pengawal harga telah ditetapkan tanda atal label untuk dipamerkan di bawah s 13(1)(d)'. Maka, majistret mempunyai budi bicara untuk memerintahkan perlucuthakan barang yang disebut dalam pertuduhan di bawah s 14(2)(b) Akta itu (lihat ms 216I, 217A–F; *PP v Chu Beow Hin* [1982] 1 MLJ 135 diikut).

(2) Walau bagaimanapun, majistret telah membuat perintah perlucuthakan di bawah s 407(2) KAJ. Dengan mengambil kira bahawa s 14(2)(b) Akta itu adalah peruntukan khas yang dibuat dalam statut khas, prinsip generalibus specialia derogant mesti dipertimbangkan dan oleh itu Akta itu menggantikan peruntukan am KAJ. Majistret sepatutnya menggunakan kuasa budi bicara perlucuthakan di bawah s 14(2) (b) dan bukannya s 407(2) KAJ.

A Dari alasan keputusan majistret itu, beliau telah menjalankan kuasa budi bicaranya untuk mengarahkan perlucuthakan dengan betul, dan dengan menjalankan kuasa kembalian, mahkamah boleh membuat satu perintah perlucuthakan di bawah s 14(2)(b) Akta itu (lihat ms 217G–I, 218A–C; *PP v Chu Beow Hin* [1982] 1 MLJ 135 diikut).]

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Notes

For cases on forfeiture of price controlled goods, see 5 *Mallal's Digest* (4th Ed, 1994 Reissue) paras 1331–1333.

C **Case referred to**

PP v Chu Beow Hin [1982] 1 MLJ 135

Legislation referred to

Criminal Procedure Code (FMS Cap 6) s 407(2)

D Price Control Act 1946 ss 13(1), 14(2)(a), (b), (4)

Price Control (Amendment) Act 1994

Price Control (Indication of Price by Retailer) Order 1993 O 3(1), O 5

E *Peggy Liow* (*Jayasuriya, Kah & Co*) for the appellant.

Osman bin Ujang (Deputy Public Prosecutor) for the respondent.

Cur Adv Vult

F **Tee Ah Sing JC**: MP Machinery (M) Sdn Bhd ('the appellant') was charged as follows:

> Bahawa kamu pada 4 Mei 1994 kira-kira jam 12.30 tengah hari di premis MP Machinery (M) Sdn Bhd, Lot 3, Inanam Baru, Phase III, Batu 5½, Jalan Tuaran, Inanam Kota Kinabalu, di dalam daerah Kota Kinabalu, di dalam negeri Sabah sebagai penjual runcit barang-barang telah didapati tidak meletakkan label, teg atau tanda pada barang-barang berikut iaitu:
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> G (1) pam air jenama Robin model EY15 sebanyak 4 unit;
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> (2) injin Suzuki model V120 (3.8) sebanyak 1 unit; dan
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> (3) pam air Suzuki model V120 (3.8) sebanyak 1 unit,
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> yang dipamerkan untuk jualan dalam premis kamu, menunjukkan harga tunai bagi tiap-tiap satu unit barang-barang berkenaan, dan dengan demikian
> H kamu telah melanggar Perintah 3(1) Perintah Kawalan Harga (Penandaan Harga Oleh Penjual Runcit) 1993, dan disebabkan oleh Perintah 5, perintah-perintah tersebut, kamu telah melakukan suatu kesalahan di bawah Akta Kawalan Harga 1946 dan boleh dihukum di bawah s 22(2) Akta yang sama.

I The appellant pleaded guilty to the said charge by its director. The appellant was fined RM1,000 and the subject matter of the charge were confiscated and forfeited by the learned magistrate under s 407(2) of the Criminal Procedure Code (FMS Cap 6) ('the CPC').

Firstly, it is the contention of learned counsel for the appellant that the learned magistrate did not have the power to make an order of forfeiture under s 22 of the Price Control Act 1946 ('the Act'). Secondly, learned counsel for the appellant submitted that the learned magistrate erred in law in holding that the goods can be forfeited by virtue of s 407(2) of the CPC. She also contended that there are no special provisions relating to forfeiture save as to s 14(2)(a) and (b) which relates to price controlled goods in the Act when grants the court the power to order forfeiture. And the specific power of forfeiture applies only when there are price controlled goods. It is her submission that the subject matter of the charge are not price controlled goods.

The third ground of appeal is that the order of forfeiture of the goods was excessive in view of the mitigating factors.

The learned deputy public prosecutor submitted that the learned magistrate has the discretion to order forfeiture of the goods under s 14(2)(b) of the Act. He also submitted that the requirement for price tags is for the information of the public regarding the prices of goods to avoid manipulation of prices of goods by businessmen.

Section 14(2) of the Act reads as follows:

> (2) Where any price controlled goods have been seized under sub-s (1)(a), then —
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> (a) if, within thirty days of the seizure, no proceedings are instituted against any person for an offence alleged to have been committed in relation to those goods, the goods and accompanying appliances shall be restored to the person from whom they were seized if he can be found and, if not, shall be disposed of as may be directed by a magistrate; or
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> (b) if, within thirty days of the seizure, proceedings are instituted against any person, the goods and accompanying appliances may be forfeited or otherwise disposed of in such manner as the court may direct.
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> Provided that where any goods which have been seized under sub-s (1)(a) are of a perishable nature they may be sold by the order of the price controller, the deputy price controller or any assistant price controller and this subsection shall apply to the disposal of the proceeds of the sale in the same manner as they would have applied to the disposal of those goods if the goods had not been sold.

Subsection (2) of s 14 of the Act has been amended by the Price Control (Amendment) Act 1994. This amendment came into force with effect from 1 August 1994.

In the present appeal, the relevant provision to apply is the unamended sub-s (2) of s 14 of the Act.

The provisions of s 14 (2)(b) of the Act has been lucidly explained in the case of *PP v Chu Beow Hin* [1982] 1 MLJ 135 where his Lordship Raja Azlan Shah Ag LP (as he then was) delivering the judgment of the Federal Court at pp 136-137 said:

A We take the view that the enacting words of s 14(2)(b) are not only very clear, but they are also direct. If proceedings are instituted within thirty days of the seizure of goods by any of the officers named in s 14(1) of the Act, the court may, inter alia, forfeit or otherwise dispose them in such manner as it may direct. What could be plainer than that? In such a case, the court must give effect to the clear and explicit language of the enacting B words of the subsection.

And further down at p 137, his Lordship said:

Forfeiture clauses are common in penal statutes. They can of course take many forms. We reiterate that there are cogent reasons of policy why the Price Control Act 1946 was passed. It provides for a forfeiture provision as C an added penalty because we think that Parliament must have intended that a limited penalty without the forfeiture clause may prove illusory to remedy the mischief.

So it is abundantly clear that under s 14(2)(b) of the Act the court has a discretion whether to forfeit any price controlled goods seized or not.

D The issue in the present appeal is are the goods as stated in the charge 'price controlled goods'.

The Price Control (Indication of Price by Retailer) Order 1993 was made pursuant to the powers conferred by para (d) of sub-s (1) of s 13 of the Act.

E And sub-s (4) of s 14 of the Act provides that:

(4) For the purpose of this section, the expression 'price controlled goods' shall include any goods or classes of goods in respect of which the price controller has prescribed marks or labels to be displayed under s 13(1)(d).

F So it is clear by virtue of sub-s (4) of s 14 of the Act that the goods as described in the charge are 'price controlled goods' for the purposes of s 14.

As such, I am of the view that the learned magistrate has the discretion to order forfeiture of the goods as described in the charge under s 14(2)(b) G of the Act.

However, the learned magistrate made the order of forfeiture under s 407(2) of the CPC.

I shall now revert to the case of *PP v Chu Beow Hin* [1982] 1 MLJ 135, where his Lordship Raja Azlan Shah Ag LP (as he then was) at p 137 H said:

Lastly, we need to say something on the provision of s 407 of the Criminal Procedure Code (FMS Cap 6). The learned judge seems to think it applies in the present case because there is no express provision in the said Act regarding forfeiture. Section 407 enacts that the court's power to order forfeiture is 'subject to any special provisions relating to forfeiture contained I in the written law under which the conviction was had.' That in our opinion is a general provision. The Price Control Ordinance 1946, the precursor to the Price Control Act was passed subsequently and brought into effect on 1 October 1946. It is a special enactment, and in passing it the legislature

had its intention directed to the special case which the statute was meant to meet, and considered and provided for all the circumstances of the special case. Where a special provision is made in a special statute that special provision excludes the operation of a general provision in the general law — generalibus specialia derogant. Therefore, the Price Control Act deals with a special case and to that extent the general provisions of the Criminal Procedure Code do not affect its operation.

In view of the decision of the aforesaid case, I am of the view that the learned magistrate should have exercised the discretionary power of forfeiture under s 14(2)(b) of the Act and not s 407(2) of the CPC.

From the grounds of decision of the learned magistrate, I find that he has exercised his discretionary power to order forfeiture correctly.

In view of the foregoing, I dismiss the appeal against the forfeiture. I hereby confirm the order of forfeiture made by the learned magistrate. In exercise of my revisionary powers, I order that the forfeiture be made pursuant to s 14(2)(b) of the Act.

Appeal dismissed.

Reported by CK Ong